

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of:

Investigation Case Number 04-0024-PHR

KERRY KARN
Holder of License No. 10907
For the Practice of Pharmacy
In the State of Arizona,

Respondent

**CONSENT AGREEMENT AND ORDER
FOR SUSPENSION AND PROBATION****RECITALS**

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5), Kerry Karn ("Respondent"), holder of pharmacist license number 10907 to practice pharmacy in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that he has a right to a public administrative hearing concerning the above-captioned matter, at which hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

3. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action against him.

4. Respondent understands this Consent Agreement deals with Board Investigation Case No. 04-0024-PHR involving allegations of unprofessional conduct against Respondent. The

1 investigation into these allegations against Respondent shall be concluded upon the Board's
2 adoption of this Consent Agreement.

3 5. Respondent understands that this Consent Agreement does not constitute a dismissal
4 or resolution of any other matters currently pending before the Board, if any, and does not constitute
5 any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other
6 pending or future investigation, action or proceeding. Respondent also understands that acceptance of
7 this Consent Agreement does not preclude any other agency, subdivision, or officer of this State from
8 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
9 Consent Agreement.

10 6. All admissions made by Respondent in this Consent Agreement are made solely for the final
11 disposition of this matter, and any related administrative proceedings or civil litigation involving
12 the Board and Respondent. There fore, any admissions made by Respondent in this Consent
13 Agreement are not intended for any other use, such as in the context of another regulatory agency's
14 proceedings, or civil or criminal proceedings, whether in the state of Arizona or in any other state or
15 federal court.

16 7. Respondent acknowledges and agrees that upon signing this Consent Agreement and
17 returning this document to the Board's Executive Director. Respondent may not revoke his acceptance
18 of the Consent Agreement or make any modifications to the document regardless of whether the
19 Consent Agreement has been signed by the Executive Director. Any modification to this original
20 document is ineffective and void unless mutually agreed by the parties in writing.

21 8. Respondent understands that the Consent Agreement shall not become effective unless
22 and until adopted by the Board and signed by its Executive Director.

23 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is void
24 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
25 force and effect.

26 10. Respondent understands and agrees that if the Board does not adopt this Consent

1 Agreement, he will not assert as a defense that the Board's consideration of this Consent
2 Agreement constitutes bias, prejudice, prejudgement or other similar defenses.

3 10. Respondent understands that this Consent Agreement is a public record that may be
4 publicly disseminated as a formal action of the Board and may be reported as required by law to
5 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

6 11. Respondent understands that any violation of this Consent Agreement constitutes
7 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms
8 of probation, a consent agreement or a stipulation issued or entered into by the board or its Executive
9 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

10 REVIEWED AND ACCEPTED BY:

11 
12 KERRY KARN

8-3-2004
DATE

13 _____
14 Notary Public

15 **FINDINGS OF FACT**

16 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
17 matters described herein. Respondent admits to the following Findings of Fact:

18 12. The Board is the duly constituted authority for the regulation and control of the practice of
19 pharmacy in the State of Arizona.

20 13. The Board possesses jurisdiction over the subject matter and over Respondent as a
21 licensee of the Board under A.R.S. § 32-1901, *et seq*.

22 14. Respondent is the holder of a license 10907 which permits him to engage in the practice of
23 pharmacy in the State of Arizona.

24 15. May 1, 2004 and May 20, 2004, Respondent was employed as a pharmacist at OSCO
25 Drug Pharmacy #969, 6363 E. 22nd Street, Tucson, Arizona.

26 16. On June 29, 2004, Richard Mazzoni, RPh, OSCO/Albertson's Director of Pharmacy

1 Operations sent a letter addressed to the Board (see Exhibit A) which listed the following
2 admissions by Kerry Karn:

- 3 a. Diversion of various hydrocodone products from his employer for the purpose of self-
4 administration.
5 b. Theft of various hydrocodone products from patient's filled prescriptions (short count).
6 c. Practicing pharmacy while impaired.

7 17. On July 13, 2004, a Board Compliance Officer obtained a copy of a letter (see Exhibit B)
8 sent by Dan Johnson, pharmacist-in-charge at OSCO pharmacy #959, to Stacy Ramirez, District
9 Pharmacy Manager (DPM) for the pharmacy. The letter contained the following information:

10 (a) A summary of a telephone call from Lisa Karn, wife of Kerry Karn. The summary included
11 a statement made by Lisa Karn to Dan Johnson, that " she as a pharmacist herself had a legal
12 obligation to protect the public due to his (Mr. Karn's) impairment". Ms. Karn further stated
13 that Respondent had been consuming generic Vicodin and to a lesser extent generic Valium.
14 Ms. Karn also stated that Respondent would short patient's their prescribed quantity of
15 medication, so that counts should still be accurate at the pharmacy. Additionally, Ms. Karn
16 also stated that Respondent had taken eight (8) tablets from a prescription of Oxycontin 10 mg.
17 #270 prescription.

18 (b) Mr. Johnson also reported to Ms. Ramirez that Respondent had confirmed during repeated
19 telephone calls that he had been taking generic Vicodin as well as generic Norco (hydrocodone
20 10mg./acetaminophen 325mg.) Respondent also admitted that it had been going on for a
21 considerable amount of time and dated back to when he was employed at OSCO Pharmacy
22 #961 as well. Respondent admitted to Mr. Johnson that he had taken some generic Valium as
23 well.

24 (c) Respondent admitted that he had taken a leave of absence from OSCO Pharmacy #961 to
25 try to break his habit and that he had been advised by a physician to obtain treatment in a 30-
26 day inpatient program.

27 18. Respondent entered into the Pharmacists Assisting Pharmacists of Arizona (PAPA), a
28 substance abuse treatment program that is recommended by the Board and authorized under A.R.S. §
29 32-1932.01.

30 CONCLUSIONS OF LAW

31 19. The Board is the duly constituted authority for the regulation and control of the practice of
32 pharmacy in the state of Arizona, under A.R.S. § 32-1901, *et seq.*

20. The conduct and circumstances described in the Findings of Fact above constitute grounds for disciplinary action under A.R.S. § 32-1927 (A)(4), (5) & (10) and A.R.S. § 32-1927 (B)(2) to wit:

A.R.S. § 32-1927(A) The license of any pharmacist, pharmacy intern or graduate intern may be revoked or suspended or a pharmacist or intern may be placed on probation by the board if:

(4) The licensee reports for duty under the influence of alcohol or other drugs.

(5) The licensee is addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit in the opinion of the board to practice the profession of pharmacy.

(10) The licensee is found by the board to be guilty of violating any Arizona or federal law, rule, or regulation relating to the manufacture and distribution of drugs, devices, or the practice of pharmacy.

A.R.S. § 32-1927 (B) The license of any pharmacist or pharmacy intern may be revoked or suspended or the pharmacist or pharmacy intern may be placed on probation or censured and a civil penalty of not more than one thousand dollars [(\$1000.00)] for each offense may be imposed by the board if the licensee:

(2) Is found by the board, or is convicted in a federal or state court, of having violated federal or state laws or administrative rules pertaining to marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances.

ORDER

Based upon the above Findings of Fact and Conclusions of Law and under the authority granted to the Board under A.R.S. §§ 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-122(G).

IT IS HEREBY ORDERED that:

21. Effective May 20, 2004, the last day Respondent worked in a pharmacy, License No.10907, which was issued to Respondent for the practice of pharmacy in the State of Arizona, is hereby placed on **SUSPENSION**, until September 1, 2004, and thereafter a **PROBATION** is imposed for a period of five (5) years upon adoption of this Consent Agreement by the Board. The **SUSPENSION** and **PROBATION** are subject to the following conditions:

22. Respondent shall have initiated a five (5) year contract with the Pharmacists Assisting Pharmacists (PAPA) and shall abide by every requirement of that contract.

23. Respondent shall pay all fees and complete all Continuing Education requirements

1 throughout the term of his probation to maintain Pharmacist License Number 10907.

2 24. Respondent shall not serve as a preceptor pharmacist or pharmacist-in-charge throughout
3 the term of his suspension and probation.

4 25. Respondent shall obey all federal and state laws and rules governing the practice of
5 pharmacy.

6 26. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or
7 has maintained licensure in the profession of pharmacy along with the registration number of said
8 licenses.

9 27. Respondent is required to advise the Board immediately of any change in pharmacy
10 employment status throughout the term of his probation.

11 28. Respondent is required to furnish all pharmacy employers with a copy of this Board Order
12 throughout the term of his probation.

13 29. Respondent shall perform four hundred (400) hours of community service approved by the
14 Board before the term of probation is completed.

15 30. Respondent shall submit to a minimum of two (2) monthly random biological fluid
16 screenings for the presence of drugs or alcohol in his body as determined by PAPA during the
17 Probation. Nevertheless, upon Respondent's acceptance of employment as a pharmacist, he shall
18 submit to a minimum of four (4) monthly random biological fluid screenings for the presence of
19 drugs or alcohol in his body for the remainder of the Probation.

20 31. If Respondent violates this Order in any way or fails to fulfill the requirements of this
21 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke,
22 suspend or take other disciplinary actions against the Respondent. The issue of such hearing will be
23 limited solely to whether this Order has been violated.

24 32. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
25 after August 12, 2009 to request that the probation imposed by this Order be terminated.

26 . . .

1 DATED and EFFECTIVE this 12th day of AUGUST, 2004

ARIZONA STATE BOARD OF PHARMACY



Hal Wand, RPh
Executive Director
Arizona State Board of Pharmacy

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8 ORIGINAL of the foregoing, fully executed,
9 filed this 12th day of AUGUST, 2004, with:

10 Arizona State Board of Pharmacy
11 4425 W. Olive Avenue, #140
Glendale, Arizona 85302

12 Fully Executed Copy of the foregoing sent
13 via Certified US mail this 12th day of
AUGUST, 2004 to:

14 Kerry Karn
15 11355 E. Old Spanish Trail
Tucson, AZ 85710

16 Copy of the foregoing mailed
17 this 12th day of AUGUST 2004 to:

18 Roberto Pulver
19 Assistant Attorney General
1275 W. Washington, CIVILFS
20 Phoenix, Arizona 85007
Attorney for the State